

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5000, 5400, 5420, 5440, 5450, 5460, 5470, and 5500

[LLWO200000 L63100000 PH0000 19X]

RIN 1004-AE61

Forest Management Decision Protest Process and Timber Sale Administration

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to revise its regulations for protests of forest management decisions and administration of the timber sale process. This proposed rule would streamline the process for sale of forest products by the BLM. Existing regulatory requirements are poorly defined, repetitive, and burdensome. The proposed rule would improve the BLM's ability to conduct active forest management, while reducing burdens to the public and the administration of BLM lands.

DATES: Please submit comments on this proposed rule to the BLM on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The BLM is not obligated to consider any comments received after this date in making its decision on the final rule.

The proposed rule includes information collection activities that must be approved by the Office of Management and Budget (OMB). If you wish to comment on the information collection requirements in this proposed rule, please note that the OMB is required to

make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the *Federal Register*.

Therefore, a comment to the OMB on the proposed information collection requirements is best assured of having its full effect if the OMB receives it by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule, identified by the number RIN 1004-AE61, by any of the following methods:

- *Mail:* U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134 LM, 1849 C St., N.W., Washington, D.C. 20240, Attention: RIN 1004-AE61.

- *Personal or messenger delivery:* U.S. Department of the Interior, Bureau of Land Management, 20 M Street, S.E., Room 2134LM, Washington, DC 20003, Attention: Regulatory Affairs.

- *Federal eRulemaking portal:* <http://www.regulations.gov>. In the Searchbox, enter “RIN 1004-AE61” and click the “Search” button. Follow the instructions at this website.

You may submit comments on the information collection activities by any of the following methods:

Fax: Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Desk Officer for the Department of the Interior, fax 202–395–5806.

Electronic mail: OIRA_Submission@omb.eop.gov.

Please indicate “OMB Control Number 1004–0058,” regardless of the method used to submit comments on the information collection burdens. If you submit comments

on the information-collection burdens, you should provide the BLM with a copy, at one of the street addresses listed in this section, so that all written comments can be summarized and addressed in the final rulemaking. Comments not pertaining to the proposed rule's information-collection burdens should not be submitted to OMB. The BLM is not obligated to consider or include in the Administrative Record for the final rule any comments that are improperly directed to OMB.

FOR FURTHER INFORMATION CONTACT: Marlo Draper, Division Chief of Forest, Range, Riparian, and Plant Conservation, WO-220, 202-912-7222. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339, 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion of the Proposed Rule
- IV. Procedural Matters

I. Public Comment Procedures

You may submit comments on the proposed rule, marked with the number RIN 1004-AE61, by any of the methods described in the ADDRESSES section. If you wish to comment on the information collection requirements, you should send those comments as outlined under the DATES and ADDRESSES headings. Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your

comments should reference the specific section or paragraph of the proposal that you are addressing. The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those supported by quantitative information or studies; and
2. Those that include citations to, and analyses of, the applicable laws and regulations.

The BLM is not obligated to consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see "DATES") or comments delivered to an address other than those listed above (see "ADDRESSES").

Comments on the proposed rule, including names and street addresses of respondents, will be available for public review at the address listed under "ADDRESSES: Personal or messenger delivery" during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment--including your personal identifying information--may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

Pursuant to the Oregon and California Grant Lands Act (O&C Act) and the Coos Bay Wagon Road Grant Lands Act (CBWR Act) (43 U.S.C. 2601 *et seq.*), jointly referred to as the O&C Act, the BLM is required to manage approximately 2.4 million acres for forest production in conformity with the principle of sustained yield. In

accordance with the O&C Act, the BLM declares the allowable sale quantity (ASQ) of timber for each sustained yield unit in its Resource Management Plans (RMPs) for western Oregon and then offers for sale a volume of timber equal to the declared ASQ on an annual basis. *See Swanson v. Bernhardt*, No. 1:15-cv-01419 (D.D.C) (September 30, 2019 Order). The O&C Act is a dominant use statute for sustained yield timber production. Under the Materials Act of 1947 (30 U.S.C. 601 *et seq.*); and other legal authorities, the BLM is authorized to convey timber and other vegetative materials on other lands owned by the United States. The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701 *et seq.*) charges the BLM with managing public lands on the basis of multiple use and sustained yield, unless otherwise specified by law.

The regulations pertaining to the Administration of Forest Management Decisions (43 CFR part 5000) were promulgated in 1984 (49 FR 28561 (July 13, 1984)) and 43 CFR part 5400 pertaining to the Sale of Forest Products were promulgated beginning in 1970 (35 FR 9785 June 13, 1970). These regulations were adopted to implement the Materials Act and the O&C Act. The BLM has amended these regulations since their original promulgation to expedite implementation of decisions relating to forest management, improve agency procedures, and to update the regulations for consistency with statutory changes.

In 1984, the BLM proposed to add a 15-day public protest process to certain forest management decisions, including advertised timber sales. This measure was expected to “expedite implementation of decisions relating to timber management” and “increase the probability that private businesses dependent upon the Bureau of Land Management’s timber management contracts would be able to accomplish their regularly

scheduled activities” (49 FR 3884 (Jan. 31, 1984)). The BLM issued a final rule adopting a 15-day protest period and establishing that filing a notice of appeal with the Interior Board of Land Appeals under 43 CFR part 4 does not automatically suspend the effect of forest management decisions that are posted and protested as described under 43 CFR §§5003.2 and 5003.3 later that year. The BLM has not revised the protest process since the final rule was issued in 1984, and the way that the BLM plans forest management projects and completes the environmental review of these projects has changed significantly since that time.

When the forest management rules were promulgated in 1984, the BLM designed individual timber sales that were based on the location and extent of the forest management activity. Over time, the BLM has changed the way it designs its timber sales and other forest management projects and often conducts its environmental review on multiple projects in a single watershed or on a biologically-relevant scale, such as wildlife habitat for a particular species. Moreover, the BLM promotes collaboration and information-sharing during the National Environmental Policy Act (NEPA) process and today more interested individuals and parties participate in the public involvement opportunities during the decision-making process when their input is most helpful. While the protest process was originally proposed to “expedite implementation of decisions relating to timber management,” in some cases today individuals and organizations that are not satisfied with the final forest management decision are using the protest process to delay implementation by filing lengthy protests with the same comments that were previously raised during the NEPA process and no explanation of how the BLM failed to address these previously submitted comments. Responding to these protests can be costly

to the BLM in terms of time and other resources, and in many cases may not improve the agency decision or reduce appeals and litigation.

The proposed amendments eliminate the protest process after a forest management decision is issued. This change will help BLM achieve the original purpose of the process, expediting the implementation of timber management decisions, while still providing ample opportunity for public comment and input, including, but not limited to, comment during the NEPA review process.

Under the current regulations, the BLM regularly issues forest management decisions that cannot be protested until the BLM issues a notice of an advertised timber sale, which, in many cases, occurs long after the environmental review has taken place. The proposed amendments streamline the procedures governing forest management decisions by allowing a single forest management decision to cover all forest management activities covered in an environmental review document. This change will allow the public to identify any resource conflicts or other issues of concern earlier in the BLM's forest management process, and enhance the BLM's ability to resolve those issues before it advertises a timber sale or implements other forest management activities. It will also enhance administrative efficiencies by allowing the BLM to simultaneously address issues associated with multiple individual sales and other forest management activities in a single decision. In addition, many of BLM's decisions are time sensitive in nature such as fire resilience thinning, thinning for insect and disease resilience, or post-fire salvage sales. The BLM desires to be more responsive to developing forest health issues and identified wildfire risks. Moreover, in western Oregon, streamlining the forest management decision-making process would help the BLM to more expeditiously offer

timber sales on O&C lands in order to achieve the declared ASQ in accordance with the O&C Act.

The proposal also seeks to better utilize communications technology by making decisions available online and allowing electronic submission of public comments. These changes would increase efficiency for both the public and the BLM.

Additionally, this proposed rule contains a number of updates and revisions to part 5400 Sale of Forest Products. This rule would update the regulations to conform to statutes prohibiting the export of unprocessed Federal timber and proposes changes in scale sale procedures that respond to the increased interest in developing innovative methods to administer scale sales. In general, the proposed revisions seek to provide better clarity of sale contract terms and conditions, and to give the BLM greater flexibility to conduct sales efficiently.

III. Discussion of the Proposed Rule

Part 5000 Administration of Forest Management Decisions

While a protest process for forest management decisions is not required by statute, the BLM's current regulations include a discretionary protest process that may be available for certain authorizations relating to forest management. This discretionary protest process is largely duplicative of other opportunities for public involvement, including through the NEPA process. In general, the best opportunity to influence management of resources is during the early stages of public comment periods provided during the NEPA process and prior to the formulation of a decision. At least in some instances, the protest process adds time and expense to the decision-making process, contrary to the express purpose of the 1984 rulemaking; may not avert administrative

appeals and judicial litigation; and, most importantly, may not produce better BLM decisions and resource management outcomes. In addition, a significant number of timber sales are developed to reduce the potential for high severity wildfire. Prolonged decision-making processes delay implementation of critical wildfire mitigation treatments that often have the objective of protecting human health and safety. Consequently, the BLM proposed eliminating the protest process. Forest management decisions would still generally be subject to appeal to the Interior Board of Land Appeals (IBLA) or challengeable in federal court.

In the alternative, through this rulemaking, the BLM is also considering and seeks comments from the public about replacing the current public protest process with a 10-day public comment period for proposed decisions or maintaining a protest process, including by modifying the procedures governing that process.

The BLM proposes modifications to improve and streamline the forest management decision-making process. Specifically, the BLM proposes to add a definition of “forest management activity” and describe how the BLM will provide notice of forest management decisions.

The proposed revision to 43 CFR 5003.1(a) clarifies that forest management decisions issued under section 5003.2 can, at the discretion of the authorized officer, be implemented immediately or at a different date specified in the decision. The proposed revision also clarifies that forest management decisions are not automatically stayed under 43 CFR 4.21(a) if notice of appeal or a petition for a stay pending appeal is lodged with the IBLA. The BLM specifically seeks public comment on whether the BLM

should have discretion to issue all or some forest management decisions in full force and effect, including whether there should be specific criteria that the BLM should consider.

The proposed revision to §5003.2(a) now includes a reference to a new definition for a forest management activity in §5003.4 and clarifies that the BLM authorizes forest management activities by issuing forest management decisions.

Revisions to §5003.2(a) change the primary medium of public notice from publication in a newspaper of general circulation in the area where the lands affected by the decision are located to posting it on a designated agency website. In general, web-based communication is more convenient and accessible than print newspapers. In many areas, print newspapers have transitioned to news websites, which makes the notice requirements in the current regulations impractical in areas that lack print newspapers.

Proposed changes to § 5003.2(b) also require the authorized officer to provide notice of a forest management decision by publishing notice in a newspaper of general circulation in the area, sending notice to interested parties directly, or notifying the general public, through various means, such as social media, email, or other mass media platforms in addition to posting the decision on the agency website. This change is intended to further facilitate notice reaching interested parties, including those who may not have web access.

This proposed rulemaking would eliminate section 5003.3, which governs the protest process. The BLM specifically requests comments about this proposed change, including about other opportunities to foster public involvement in forest management decisions, such as through the NEPA process, or whether, for some or all proposed forest

management decisions, the BLM should allow for a protest process or a public comment period.

The current regulations address forest management decisions for forest management activities, but they do not define a forest management activity. Section 5003.4 of the proposed rules includes a definition of forest management activity to clarify the type of activities that would fall under the scope of this section of the regulations. The definition emphasizes that a forest management activity has a silvicultural or forest-protection objective. These activities result in changes to forest or forest adjacent vegetation that have an explicit forest output or ecological condition as the outcome of the activity and may include other activities that facilitate or complement the forest management activity. Examples of forest management activities may include: cutting of trees and vegetation; harvesting; tree planting; seedling protection; vegetation type conversions; fuels reduction; fire pre-suppression; and road construction and maintenance, when these activities are intended to provide, for example, a commercial forest product, improve tree and forest health, reduce fire risk, increase forest resiliency to environmental stressors, or address insect or disease infestations. A forest management activity would not include, for example, clearing trees for the construction of a power line in a right of way.

The BLM specifically requests comments on the proposed elimination of the public protest procedures in section 5003.3, including comment on alternative procedures that the BLM should consider with respect to comments and protests, such as a discretionary 10-day public comment period to allow for substantive comment on a proposed forest management decision.

Part 5400 Sales of Forest Products; General

Section 5400.0-3 contains the authority for part 5400. Section 5400.0-3(c) references a law related to the prohibition of exporting unprocessed timber from Federal lands that was superseded by 16 U.S.C. 620. The proposed changes to this section would reference the BLM's current statutory requirements.

Section 5400.0-5 contains the definitions for part 5400. The proposed rule would add new definitions for "lump sum sale" and "scale sale," which are used, but not defined, in the current regulations. These two sale types are the only sale types the BLM uses. These definitions ensure a common understanding of the key difference between these sale types, which relates to how the volume of the forest product is determined.

The Fair Market Value definition would be updated by deleting the second sentence referencing a BLM Manual that is no longer effective. This change would have no effect because appraisal guidance was updated in 1996 to address this change. Three other changes in § 5400.0-5 relate to the administration of the export provisions of this rule. The terms "export" and "sourcing area" would be added to provide a basis for determining a violation of the export prohibition. The substitution definition would be changed to update the time period from 12 months to 24 months to conform to 16 U.S.C. 620 and to also delete a reference to a substitution exception for rights-of-way that is not included in the statute.

Changes to Section 5402.0-6(d) delete an exception to substitution restrictions that is not provided by statute 16 U.S.C. 620. This exception was established in the BLM's regulations prior to the passage of the statute.

Section 5402.0-6(e) would amend the rule to clarify how special forest product prices will be determined. The BLM sells permits to the public for special forest products, which include fuelwood, Christmas trees, edibles, pine nuts, cones, seedlings, and other forest products other than sawtimber. BLM state offices generally publish a price list based on estimated values within a state. Current regulations in § 5420.0-6 require that all vegetative resources be appraised and in no case be sold at less than appraised value. BLM offices are concerned that selling products at the published price for the state is not consistent with subpart 5420, because the value of products across a state can vary. The addition of § 5402.0-6(e) would clarify that vegetative products can be sold by permit without appraisal after payment of adequate compensation, which is the standard in the authorizing statute. This means that price lists developed by BLM managers for special forest product permits could be used, and that individual appraisals for each permit sale would not be required.

Section 5420.0-6 currently requires appraisal of all timber and vegetative resources that are sold, and in no case sold for less than the appraised value. An exemption for special forest products would be added which references § 5402.0-6(e) as described in the previous section. The proposed rule removes the phrase “prohibiting the sale of products at less than appraised value” to allow the BLM to award timber sale contracts or vegetative material permits if bids come in below the appraised value. The Materials Act of 1947 (30 U.S.C 601) requires the BLM to advertise timber sales and to award sales to the highest bidder. The BLM is not required by law to sell timber at or above the appraised value. Producing highly accurate appraisals is costly due to factors such as acquiring log price data, labor costs, and equipment costs, including fuel,

maintenance, and depreciation. This has two potentially negative consequences. First, the BLM could incur a high cost to produce an appraisal, which is particularly counterproductive for lower value products. Second, an appraisal could over-price a sale and result in no bids. No-bid sales result in increased costs associated with reappraising and reoffering a sale and are particularly costly for salvage sales where the timber quality rapidly deteriorates. The proposed changes to this section are intended to continue the practice of appraising timber as a guide to determining a reasonable price, but also to allow the BLM to sell products to the highest bidder at a price below the appraised price if the authorized officer receives a reasonable bid. This provision recognizes that an appraisal is an estimate of the market price, but that competitive bidding through an auction or a sealed bid is generally superior at identifying the true market price. The revision is expected to increase efficiency in appraisals and reduce no bid sales.

This proposed rule would also change the title of § 5422.1 from “Cruise Sales” to “Lump-Sum Sales.” This section would be revised to say that a lump-sum sale is most often estimated using a tree cruise method. The BLM does not use the term “cruise sale,” though it is generally understood to mean lump sum. This revision is intended to clarify that both sale types are legitimate and available for use based on an authorized officer’s discretion.

Changes to §5422.2 would revise some of the rules for the use of scale sales and reorganize the section for clarity. The current regulations limit the use of scale sales to events such as timber disasters or imminent resource loss. Other circumstances in which its use is permitted are ambiguous. Implementation of this section in the existing rule has generally discouraged scale sales, despite the fact that it is a standard practice in the

logging industry and its use is common among other sellers of timber, such as state governments and the U.S. Forest Service. The proposed rule would permit the use of scale sales at the discretion of the authorized officer and would not limit the use of scale sales to events such as timber disasters or imminent resource loss. The term “scale sales” includes the use of weight scales, including third party weight scales that are certified by a state government for timber sold on a per-ton basis. Section 5422.2 currently does not mention weight scales, which can lead to the incorrect conclusion that the term scale sale in the current rule is only referring to log scaling using a log rule.

Section 5424.1 relates to the enforcement of the export prohibition. Timber export laws are designed to not only prohibit the timber cut from Federal land from being exported, but also to prohibit Federal timber from being used as a substitute for other timber the purchaser owns and exports. The revision to this section would update the time period for tracking and reporting the export of private timber for a purchaser or an affiliate of a purchaser of Federal timber from one year to two years. This revision is to bring the rule into conformance with the Forest Resources Conservation and Shortage Relief Act of 1990 as amended.

Section 5430.0-6 gives the BLM the option to advertise competitive timber sales on an agency website.

Section 5441.1 would establish the qualifications for bidders on BLM timber sales. Revisions to this section pertain to the debarment regulations at 2 CFR part 180. Under proposed §5441.1(c), an individual or entity could be disqualified as a bidder on a BLM timber sale if that individual or entity is debarred in the Federal Government-wide debarment list. In accordance with 2 CFR part 180, there is a process for petitioning for

an exception from debarment which is noted in the proposed §5441.1(c)(1). The revision to this section would bring it into conformance with 2 CFR part 180.

Section 5441.1-1 sets forth the requirements for a bid deposit that must accompany a bid on a timber sale. The proposed rule would allow the BLM to refund up to half of the bid deposit if the award of the sale is delayed for more than 90 days. In some instances a sale is conducted, a high bidder is announced, and then before award of the contract, circumstances, such as a court injunction, delay the award of the timber sale contract. Given that bid deposits are 10 percent of the appraised value, a deposit can be substantial. The BLM recognizes that delays in the award of timber sale contracts is a burden for purchasers; thus, this proposed revision would help reduce that burden.

Section 5441.1-2 refers to a Small Business Administration road construction loan program that no longer exists. This section would be deleted because it is obsolete.

Section 5451.1 pertains to performance bonds for timber sale contracts, which function to protect the government's interest in federal lands and resources by helping to ensure the fulfillment of a purchaser's contract obligations and BLM's resource objectives. Performance bonds may be held by the BLM when a purchaser is not in compliance with contract terms and conditions. The bond can be forfeited to the BLM to cover costs of remedying unfinished contract obligations. Currently, a performance bond is required for all contracts for the sale of products greater than or equal to \$2,500 and for installment contracts less than \$2,500. For cash sales less than \$2,500, bond requirements are at the discretion of the authorized officer. The proposed rule would require a performance bond for all contracts for the sale of products greater than or equal to \$10,000 and impose a minimum performance bond of not less than \$500 or 20 percent of

the contract price whichever is greater for all installment contracts less than \$10,000. For all cash sales less than \$10,000, bond requirements would be at the discretion of the authorized officer. Under the proposed changes the BLM would retain discretion to require performance bonds within the specific limits established in the regulations and would determine the amount of bond required on a case-by-case basis after site specific analysis. These changes are being made to account for estimated inflation since the rule was established in 1970 when the amount of material covered by the bond was four to five times the amount of material covered at current prices. For example, three to five truck-loads of timber might have been sold for \$2,500 in 1970, whereas, at current dollar valuation, a single truckload of the same quality timber might exceed the threshold for the bonding requirement. This change adjusts BLM's risk exposure to a level that is similar to when the bond threshold in the current regulations was originally published.

The BLM is also proposing changes to 43 CFR 5473.4 to allow the authorized officer to grant a purchaser's request to extend the amount of operating time on a timber sale contract without reappraisal. The proposed revision to §5473.4(c) adds unusual weather conditions to the list of reasons the BLM may grant a request for a contract extension. It is the BLM's experience that some pause in operations occurs due to normal weather, such as a halt in log hauling during heavy rain events or a shutdown of yarding due to wet soils during spring melt, which would not amount to unusual weather conditions. Unusual weather conditions could be record drought leading to prolonged fire hazard or record rainfall leading to prolonged wet soil conditions.

Section 5473.4(d) also contains criteria for contract extension related to fire and other natural and man-made disasters. The purpose of this extension is to allow the BLM

to extend contracts when a disaster results in significant salvage timber that needs to be harvested elsewhere. Timber impacted by a disaster often deteriorates rapidly and attracts insects and pathogens, and it is prudent that those sales be prioritized over sales that harvest live timber. The proposed revisions to this section expands the BLM's authority to extend timber contracts in response to disasters on both Federal and non-federal lands. The revision also puts a 36-month limit on the amount of time that a contract can be extended, which is not in the current regulations. The BLM recognizes that disasters can pose a serious hardship on local communities. The proposed changes would allow the BLM to extend the contract terms and provide additional time for a purchaser to harvest green timber in areas not impacted by the disaster, which could benefit businesses and land owners by allowing them to focus their resources on areas impacted by the disaster, including salvage removal.

5500.0-5 Definitions

Paragraph (e) of this section would revise the definition of public lands to make it consistent with definition in FLPMA at 43 U.S.C. 1702(e) and to clarify that for this part of the regulations O&C grant lands are considered public lands. Moreover, this section clarifies that there are conditions for the free use of vegetative and mineral materials on O&C grant lands.

Miscellaneous

Technical Note: The BLM is proposing changes to the authority sections to reflect that the O&C Act, which was previously codified at Title 43, Chapter 28, Subchapter V, (43 USC 1181a-j.), was transferred to Title 43, Chapter 44, (43 USC 2601-2634) on July

1, 2017. The BLM is also proposing to remove Statute at Large citations that have already been codified.

IV. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this proposed rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rule making process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

The BLM reviewed the requirements of the proposed rule and determined that it would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. For more detailed information, see the Regulatory Impact Analysis (“Economic and Threshold Analysis for Proposed Forest Management Rule”) (RIA) prepared for this proposed rule. The RIA has been posted in the docket for

the proposed rule on the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter "RIN 1004-AE61," click the "Search" button, open the Docket Folder, and look under Supporting Documents.

Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

The Office of Information and Regulatory Affairs has determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866. Therefore, the proposed rule is not an “E.O. 13771 regulatory action” as defined by Office of Management and Budget (OMB) guidance implementing E.O. 13771. As such, the proposed rule would not be subject to the requirement for “regulatory actions” under E.O. 13771.¹

Regulatory Flexibility Act

This proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)(RFA). The RFA generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. *See* 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

¹ Executive Office of the President, OMB Memorandum No. M-17-21, Guidance Implementing Executive Order 13771, Titled “Reducing Regulation and Controlling Regulatory Costs,” April 5, 2017.

The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act, which can be found in 13 CFR 121.201. For a specific industry identified by the North American Industry Classification System (NAICS), small entities are defined by the SBA as an individual, limited partnership, or small company considered at “arm’s length” from the control of any parent company, which meet certain size standards. The size standards are expressed either in number of employees or annual receipts. The proposed rule is most likely to affect entities that participate in timber sales or the related protest process. The industries most likely to be directly affected are listed in the table below along with the relevant SBA size standards.

Industry	Size standards in millions of dollars	Size standards in number of employees
Timber Tract Operations	\$11.0	
Forest Nurseries and Gathering of Forest Products	\$11.0	
Logging		500
Support Activities for Forestry	\$7.5	
Environmental Consulting Services	\$15.0	
Environment, Conservation and Wildlife Organizations	\$15.0	

BLM timber sales are commonly bid on by and awarded to small businesses. The BLM is also required by the SBA regulations (13 CFR part 121) to set aside a proportion of BLM timber sales for small businesses. The proposed regulations do not change this process. Four changes in the proposed rule to subparts 5422, 5441, 5451, and 5463 would have small beneficial economic affects to small businesses by lowering financial requirements to entering into a sale contract and providing more flexibility in the timber sale contract. Section 5441.1-2 refers to a SBA road construction loan program that has expired and therefore the deletion of this section has no affect. The proposed revisions to

the forest management decision process should benefit small entities that elect to submit comments by more clearly defining the process.

For the purpose of carrying out its review pursuant to the RFA, the BLM believes that the proposed rule would not have a “significant economic impact on a substantial number of small entities,” as that phrase is used in 5 U.S.C. 605. An initial regulatory flexibility analysis is therefore not required.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of \$100 million or more. The total appraised value of all timber offered by the BLM over the last five years is approximately \$48 million per year. To the extent that the BLM can become more efficient and meet the increased timber volume offered authorized in Resource Management Plans, this rule could have positive effects to the economy. Additional details can be found in the RIA for this rule.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The primary commodity affected by this rule is lumber. The BLM does not anticipate that a reduction in timber production would occur due to this proposed rule.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The BLM believes this rule would result in positive effects in each of these areas. This proposed rule could have a small positive effect on

competition by lowering the financial requirements for entering into a small sale contract. To the extent that the BLM can become more efficient and meet the increased timber volume authorized in Resource Management Plans, this rule could have positive effects on employment, investment, and productivity.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. This proposed rule would only affect the BLM's administrative process for protest of forest management decisions and provide minor revisions to enhance flexibility in developing and administering timber sales. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630. Section 2(a) of E.O. 12630 identifies policies that do not have takings implications, such as those that abolish regulations, discontinue governmental programs, or modify regulations in a manner that lessens interference with the use of private property. There are no cases where a BLM timber sale or forest management decision has affected private property rights. The proposed rule would revise the timber sale and decision protest processes and will not affect private property rights. A takings implication assessment is not required.

Federalism (EO 13132)

Under the criteria in section 1 of E.O. 13132, this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule would revise processes that have been implemented numerous times over decades and which have not been found to have effects on the relationship or distribution of power between the national government and the States

Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian tribes (E. O. 13175 and Departmental policy)

The Department of the Interior strives to strengthen its government to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required. The BLM consults with tribes at multiple decision support stages

including development of Resource Management Plans, NEPA scoping, consultation under the National Historic Preservation Act, as well as in other circumstances identified in the BLM Tribal Consultation policy. Decisions affected by this proposed rule are included in all these decision support stages. The proposed rule would not affect these tribal consultation processes.

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

The Office of Management and Budget (OMB) has issued control number 1004-0058 for the information collection (IC) requirements pertaining to timber sales and protests of forest management decisions. This proposed rule includes revisions of control number 1004-0058. The BLM will submit those revisions of that control number to the OMB for review and approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA). The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, the BLM invites the public and other Federal agencies to comment on any aspect of the proposed IC aspects of this proposed rule. You may send your comments directly to OMB and send a copy of your comments to the BLM (see the **ADDRESSES** section of this proposed rule). Please reference control number 1004–0058 in your comments. The BLM specifically requests comments concerning the need for the information, its practical utility, the accuracy of the agency’s burden estimate, and ways to minimize the burden. You may obtain a copy of the supporting statement for the collection of information by contacting the Bureau’s Information Collection Clearance Officer at (202)

912-7405. To see a copy of the entire IC request submitted to OMB, go to <http://www.reginfo.gov> (select Information Collection Review, Currently under Review).

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB is required to make a decision concerning the collection of information contained in these proposed regulations 30 to 60 days after publication of this document in the *Federal Register*. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This guidance does not affect the deadline for the public to comment to the BLM on the proposed regulations.

Summary of Information Collection Activities

Title: Forest Management Decision Protest Process and Log Export and Substitution Determination.

OMB Control Number: 1004-0058.

Form Numbers: 5450-17, 5460-15, and 5460-17.

Description of Respondents: Purchasers of Federal timber, their affiliates, and any person who wishes to comment on a proposed BLM forest management decision.

Respondents' Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Abstract: Control number 1004-0058, as currently approved, authorizes the collection of information that assists the BLM in enforcing export and substitution prohibitions. This control number also provides the public an opportunity to comment on a proposed forest management decision. The BLM now requests that control number 1004-0058 be revised

by modifying the following IC information collection activities: (1) “Substitution Determination,” and (2) “Comment.”

Estimated Number of Responses: 325.

Estimated Total Annual Burden Hours: 550.

Estimated Total Non-Hour Cost: \$0.

Information Collection Request

At present, control number 1004-0058 authorizes four IC activities. Three of these activities assist the BLM in enforcing statutory prohibitions against:

- The export of unprocessed timber harvested from Federal lands; and
- The use of Federal timber in processing facilities while exporting non- Federal unprocessed timber that could have been used in those facilities (i.e., substitution).

The fourth IC activity in this control number provides a process for persons to comment on proposed forest management decisions.

This proposed rule would revise IC activities associated with 43 CFR §§ 5424.1 and 5003.3. Revisions to §5424.1 would update that regulation in accordance with statutory amendments. Revisions to §5003.3 are intended to clarify when comments must be received and to improve the process by providing more instruction to the public about how to comment on proposed forest management decisions and by providing for the submission of comments electronically or by other means rather than exclusively by mail, as is currently required for protests. These revisions would not change our estimates of the annual burdens for any of the IC activities in control number 1004-0058.

Section 5424.1 currently authorizes the BLM to require purchasers of Federal timber, and/or their affiliates, to report private timber exported within 1 year preceding the purchase date. As revised, § 5424.1 would authorize the BLM to require reporting of private timber exported within 2 years preceding the purchase date, in accordance with the Forest Resources Conservation and Shortage Relief Act.

Section 5003.3(a) currently authorizes protests of a forest management decision to be filed within 15 days of the publication of a notice of decision or notice of sale in a newspaper of general circulation. A proposed revision of that provision would change the 15-day deadline for submitting protests to a 10-day public comment period for a proposed decision, and clarify when comments on a proposed decision must be received.

Proposed §5003.3 (b) would allow comments on a proposed decision to be filed via regular mail, fax, hand-delivery, express delivery, messenger service, or be posted electronically to an agency website, if available.

Paragraph (d) would provide that the BLM may not consider comments on a proposed decision that are not timely.

National Environmental Policy Act

The BLM does not believe this rule would constitute a major Federal action significantly affecting the quality of the human environment, and has prepared preliminary documentation to this effect, explaining that a detailed statement under the National Environmental Policy Act (NEPA) would not be required because the rule is categorically excluded from NEPA review. This rule would be excluded from the requirement to prepare a detailed statement because, as proposed, it would be a regulation entirely procedural in nature. (For further information see 43 CFR 46.210(i)). We have

also determined, as a preliminary matter, that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Documentation of the proposed reliance upon a categorical exclusion has been prepared and is available for public review with the other supporting documents for this proposed rule.

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of this regulation

We are required by E.O.s 12866 (section 1 (b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods listed in the "ADDRESSES" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Author

The principal authors of this rule are: Wade Salverson and Christian Schumacher, Division of Forest, Range, Riparian, and Plant Conservation; Jennifer Noe, Division of Regulatory Affairs; assisted by the Office of the Solicitor.

List of Subjects

43 CFR Part 5000

Administrative practice and procedure, Forests and forest products, Public lands.

43 CFR Part 5400

Administrative practice and procedure, Forests and forest products, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5420

Forests and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5440

Forests and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5450

Forests and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements.

Surety bonds

43 CFR Part 5460

Forests and forest products, Government contracts, Public lands.

43 CFR Part 5470

Forests and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5500

Forests and forest products, Public lands.

Casey Hammond

Principal Deputy Assistant Secretary – Land and Minerals Management, Exercising the Authority of the Assistant Secretary - Land and Minerals Management

43 CFR Chapter II

For the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR parts 5000, 5400 5420, 5440, 5450, 5460, 5470, and 5500 as follows:

PART 5000 – ADMINISTRATION OF FOREST MANAGEMENT DECISIONS

1. Add an authority citation for part 5000 to read as follows:

AUTHORITY: 43 U.S.C. 2601; 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1701.

2. Revise § 5003.1 to read as follows:

§ 5003.1 Effect of decisions; general.

Notwithstanding the provisions of 43 CFR 4.21(a),

(a) The authorized officer may make a forest management decision, as described in section 5003.2, effective immediately or on a date established in the decision. The filing

of a petition for a stay pending appeal under part 4 of this title shall not automatically suspend the effect of a forest management decision issued under section 5003.2.

(b) Where the BLM determines that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, BLM may make a wildfire management decision made under this part and parts 5400 through 5510 of this chapter effective immediately or on a date established in the decision. Wildfire management includes but is not limited to:

(1) Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods (with or without removal of thinned materials); and

(2) Projects to stabilize and rehabilitate lands affected by wildfire.

(c) The Interior Board of Land Appeals will issue a decision on the merits of an appeal of a wildfire management decision under paragraph (b) of this section within the time limits prescribed in 43 CFR 4.416.

3. Revise § 5003.2 to read as follows:

§ 5003.2 Notice of forest management decisions.

(a) The BLM authorizes forest management activities, which are defined in § 5003.4, by issuing forest management decisions.

Forest management decisions shall be posted on a designated agency website while also:

(1) Publishing a notice in a newspaper of general circulation in the area;

(2) Sending a notice by direct or electronic mail to a list of parties requesting direct notification; or

(3) Broadcasting a notice on one or more mass-media platforms.

(b) The posting date of the final forest management decision on the agency website establishes the official date of the decision for purposes of an appeal under 43 CFR part 4.

4. Revise § 5003.3 to read as follows:

§ 5003.3 Protests

[Reserved]

5. Add § 5003.4 to read as follows:

§ 5003.4 Definitions: General.

Forest management activity generally means activities with a silvicultural or forest protection objective including associated actions needed to carry out the silvicultural or forest protection objective such as construction and maintenance of roads and improvements.

PART 5400—SALES OF FOREST PRODUCTS; GENERAL

6. The authority citation for part 5400 is revised to read as follows:

AUTHORITY: 30 U.S.C. 601 *et seq.*, 43 U.S.C. 315, 2601, 16 U.S.C. 607a, and 43 U.S.C. 1701 *et seq.*

7. Amend § 5400.0-3 by revising paragraphs (a) and (c) to read as follows:

§ 5400.0-3 Authority.

(a) The Act of August 28, 1937 (43 U.S.C. 2601) authorizes the sale of timber from the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant

Lands and directs that such lands shall be managed for permanent forest production and the timber thereon sold, cut and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating streamflow and contributing to the economic stability of local communities and industries, and providing recreational facilities.

(c) Pub. L. 101-382 (104 Stat. 714) Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620) Restrictions on exports of unprocessed timber originating from Federal lands.

8. Amend § 5400.0-5 by adding the definitions for “Export,” “Lump sum,” “Scale sale,” and “Sourcing area” in alphabetical order and revising the definitions of “Substitution,” “Third party scaling,” and “Fair Market value” to read as follows:

§ 5400.0-5 Definitions.

Export means the transporting or causing to be transported, either directly or through another party, unprocessed timber to a foreign country. Export occurs on the date that a person enters into an agreement to sell, trade, or otherwise convey such timber to a person for delivery to a foreign country. If the date in the preceding sentence cannot be established, export occurs when unprocessed timber is placed in an export facility for preparation, including but not limited to, sorting or bundling, and container loading, for shipment outside the United States, or when unprocessed timber is placed on board an

oceangoing vessel, rail car, or other conveyance destined for a foreign country, port, or facility.

Fair Market value means the price forest products will return when offered for competitive sale on the open market.

Lump-sum means a sale where the total quantity of forest product that is designated for removal is estimated and established prior to the sale.

Scale sale means a sale where the total quantity of forest product that is designated for removal is determined after cutting, but before its conversion or end use.

Sourcing area means a geographic area approved by the Secretary of the Interior where prohibitions for direct and indirect substitution shall not apply with respect to the acquisition of unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States by a person who, in the previous 24 months, has not exported unprocessed timber originating from private lands within the sourcing area; and during the period in which such approval is in effect, does not export unprocessed timber originating from private lands within the sourcing area.

Substitution means:

(1) The purchase of a greater volume of Federal timber by an individual purchaser than has been his historic pattern within twenty-four (24) months of the sale of export by the same purchaser of a greater volume of his private timber than has been his historic pattern during the preceding twenty-four (24) months; and

(2) The increase of both the purchase of Federal timber and export of timber from private lands tributary to the plant for which Bureau of Land Management timber covered by a specific contract is delivered or expected to be delivered.

Third party scaling means the measurement of logs by a scaling organization or weight scale certified by a state, other than a Government agency, approved by the Bureau.

9. Revise § 5402.0-6 paragraph (d) to read as follows and by adding paragraph (e) and removing the parenthetical authority citation at the end of the section to read as follows:

§ 5402.0-6 Policy.

(d) All negotiated sales shall be subject to the restrictions relating to the export and substitution from the United States of unprocessed timber.

(e) Special forest products, including firewood, Christmas trees, boughs, greenery, mushrooms and other similar vegetative resources, may be sold by permit, without appraisal, after payment to the government of adequate compensation for the material and may include the expense of issuance of the permit.

PART 5410—ANNUAL TIMBER SALE PLAN

10. The authority citation for part 5410 is revised to read as follows:

AUTHORITY: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 2604.

11. Revise § 5410.0-6 to read as follows:

§ 5410.0-6 Policy.

Plans for the sale of timber from the O. and C. and public lands will be developed annually. Suggestions from prospective purchasers of such timber may be received to

assist in the development of a sound annual timber sale plan. Such plan may be advertised in a newspaper of general circulation in the area in which the timber is located or an agency website. Such advertisement shall indicate generally the probable time when the various tracts of timber included in the plan will be offered for sale, set-asides if any, and the probable location and anticipated volumes of such tracts. The authorized officer may subsequently change, alter or amend the annual timber sale plan.

PART 5420—PREPARATION FOR SALE

12. The authority citation for part 5420 is revised to read as follows:

AUTHORITY: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 2604.

13. Revise § 5420.0-6 to read as follows:

§ 5420.0-6 Policy.

All timber or other vegetative resources to be sold, except materials that qualify under § 5402.0-6(e) of this chapter, will be appraised to estimate fair market value. Measurement shall be by tree cruise, log scale, weight, or such other form of measurement as may be determined to be in the public interest.

14. Revise § 5422.1 to read as follows:

§ 5422.1 Lump-sum sales.

As the general practice, the Bureau will estimate volume for a lump-sum sale using a tree cruise basis.

15. Revise § 5422.2 to read as follows:

§ 5422.2 Scale sales.

(a) Scaling will be performed by the BLM or third party scaling organization approved by the BLM or any operator of a state certified weight scale.

(b) The BLM may also order third party scaling for administrative reasons. Such reasons would include, but are not limited to, the following: To improve cruising standards, check accuracy of cruising practices, and for volumetric analysis.

16. Amend § 5424.0-6 by revising paragraph (d) to read as follows:

§ 5424.0-6 Policy.

* * * * *

(d) The contract or permit form and any additional provisions shall be made available for inspection by prospective bidders during the advertising period. When sales are negotiated, all additional provisions shall be made part of the contract or permit.

* * * * *

17. Amend § 5424.1 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§5424.1 Reporting provisions for substitution determination.

(a) ***

(1) A purchaser who has exported private timber within two years preceding the purchase date of Federal timber; and/or

(2) An affiliate of a timber purchaser who exported private timber within two years before the acquisition of Federal timber from the purchaser.

* * * * *

PART 5430—ADVERTISEMENT

Subpart 5430—Advertisement; General

18. The authority citation for part 5430, subpart 5430, is revised to read as follows:

AUTHORITY: 43 U.S.C. 2604, 30 U.S.C. 601 *et seq.*

19. Revise § 5430.0-6 to read as follows:

§ 5430.0-6 Policy.

Competitive timber sales shall be advertised in a newspaper of general circulation or agency website in the area in which the timber or other vegetative resources are located and a notice of the sale shall be posted in a conspicuous place in the office where bids are to be submitted. Such advertisement shall be published on the same day once a week for two consecutive weeks, except that sales amounting to less than 500 M board feet, need be published once only. When in the discretion of the authorized officer longer advertising periods are desired, such longer periods are permitted.

PART 5440 --- CONDUCT OF SALES

20. The authority citation for part 5440 is revised to read as follows:

AUTHORITY: 43 U.S.C. 2604, 30 U.S.C. 601 *et seq.*

21. Amend § 5441.1 by revising paragraph (c) to read as follows:

§ 5441.1 Qualification of bidders.

(c) Timber sale contracts are "covered transactions" under the suspension and debarment rules for discretionary assistance, loan, and benefit award programs at 2 CFR part 180, implemented as a regulation by the Department at 2 CFR part 1400. See 2 CFR 180.200, 180.210, and 1400.970.

(1) A bidder or purchaser that has been suspended, debarred or otherwise determined to be ineligible for award is prohibited from bidding on a timber sale unless an award specific written compelling reasons exception determination pursuant to 2 CFR 180.135 and 1400.137 is issued by the Department's Director, Office of Acquisition and

Property Management to permit an excluded party to participate in the covered transaction.

(2) A bidder or purchaser suspended, debarred or otherwise award ineligible may continue to bid on timber purchase contracts; however, absent issuance of a written compelling reasons determination under paragraph (c)(1) of this section, no award shall be made during the period of award ineligibility.

(3) As required by 2 CFR 180.335, prior to awarding a timber sale contract, a bidder or purchaser (i.e., a nonprocurement award participant) shall certify to BLM that neither the entity nor any of its principals, as defined at 2 CFR 180.995, is suspended, debarred, or otherwise disqualified.

(4) If a participant enters into a covered transaction with another person at the next lower tier, the participant must verify that the person with whom they intend to enter into that transaction is not suspended, debarred, or otherwise award disqualified. See 2 CFR 180.300 and 1400.220.

22. Revise § 5441.1-1 to read as follows:

§ 5441.1-1 Bid deposits.

Sealed bids shall be accompanied by a deposit of not less than 10 percent of the appraised value of the timber or other vegetative resources. For offerings at oral auction, bidders shall make a deposit of not less than 10 percent of the appraised value prior to the opening of the bidding. The authorized officer may, in his or her discretion, require larger deposits. Deposits may be in the form of cash, money orders, bank drafts, cashiers or certified checks made payable to the Bureau of Land Management, or bid bonds of a corporate surety shown on the approved list of the United States Treasury Department or

any guaranteed remittance approved by the authorized officer. Upon conclusion of the bidding, the bid deposits of all bidders, except the high bidder, will be returned. The deposit of the successful bidder will be applied to the purchase price at the time the contract is signed by the authorized officer unless the deposit is a corporate surety bid bond, in which case the surety bond will be returned to the purchaser. If the BLM fails to award the timber sale within 90 days of the determination of the high bidder, a portion of the bid deposit may be refunded to the high bidder upon written request to the authorized officer, such that the BLM retains a deposit of at least 5% of the appraised value. The remainder of the full bid deposit must be resubmitted to the BLM once the high bidder is notified in writing that the delay of award has been remedied and the authorized officer is prepared to issue the contract. If the high bidder is unable to provide the full amount of the bid deposit within 30 days of the written notification, the sale will be re-auctioned and the high bidder will be barred from participating in any subsequent auctions for the same tracts.

§ 5441.1-2 [Removed]

23. Remove § 5441.1-2.

§ 5441.1-3 [Redesignated as § 5441.1-2]

24. Redesignate § 5441.1-3 as § 5441.1-2.

PART 5450—AWARD OF CONTRACT

25. The authority citation for part 5450 is revised to read as follows:

AUTHORITY: 43 U.S.C. 2604; 30 U.S.C. 601 *et seq.*

26. Amend § 5451.1 by revising paragraph (a) introductory text to read as follows:

§ 5451.1 Minimum performance bond requirements; types.

(a) A minimum performance bond of not less than 20 percent of the total contract price shall be required for all contracts of \$10,000 or more, but the amount of the bond shall not be in excess of \$500,000, except when the purchaser opts to increase the minimum bond as provided in § 5451.2. A minimum performance bond of not less than \$500 or 20% of the contract price, whichever is greater, will be required for all installment contracts less than \$10,000. For cash sales less than \$10,000, bond requirements, if any, will be at the discretion of the authorized officer. The performance bond may be:

PART 5460 – SALES ADMINISTRATION

27. The authority citation for part 5460 is revised to read as follows:

AUTHORITY: 30 U.S.C. 601 *et seq.*, 43 U.S.C. 2604.

28. Revise § 5461.3 to read as follows:

§ 5461.3 Total payment.

The total amount of the contract purchase price must be paid prior to expiration of the time for cutting and removal under the contract. For a lump sum sale, the purchaser shall not be entitled to a refund even though the amount of timber cut, removed, or designated for cutting may be less than the estimated total volume shown in the contract. For a scale sale, if it is determined after all designated timber has been cut and measured that the total payments made under the contract exceed the total sale value of the timber measured, such excess shall be refunded to the purchaser within 60 days after such determination is made.

PART 5470—CONTRACT MODIFICATION—EXTENSION—ASSIGNMENT

29. The authority citation for part 5470 is revised to read as follows:

AUTHORITY: 30 U.S.C. 601; 43 U.S.C. 2604 and 1740.

30. Amend § 5473.4 by:

- a. Removing the word “or” at the end of paragraph (c)(4);
- b. Revising paragraph (c)(5);
- c. Adding paragraph (c)(6); and
- d. Revising paragraph (d).

The revisions and addition read as follows:

§ 5473.4 Approval of request.

(c) ***

(5) Closure of operations by BLM or State fire protection agencies due to fire danger; or

(6) Closure of operations due to unusual weather, where the BLM restricted operations during periods with specific environmental conditions, including but not limited to restrictions for low soil moisture, sustained dry periods, frozen soils, or operations requiring snow cover of specific depth.

(d) Upon written request of the purchaser, the State Director may extend a contract to harvest green timber to allow that purchaser to harvest timber as salvage from other Federal or non-Federal lands that have been damaged by fire or other natural or man-made disaster. The duration of the extension shall not exceed the time necessary to meet the salvage objectives, or a maximum of 36-months. The State Director may also waive reappraisal for such extension.

PART 5500—NONSALE DISPOSALS; GENERAL

Subpart 5500—Nonsale Disposals; General

31. The authority citation for part 5500, subpart 5500, continues to read as follows:

AUTHORITY: 30 U.S.C. 601 *et seq.*, 43 U.S.C. 315, 423.

32. Amend § 5500.0-5 by revising paragraph (e) to read as follows:

§ 5500.0-5 Definitions.

(e) *Public Lands* means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management including O. and C. Lands, without regard to how the United States acquired ownership, except:

- (1) Lands located on the Outer Continental Shelf; and
- (2) Lands held for the benefit of Indians, Aleuts, and Eskimos.
